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No. 08-257

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

NELLINA L. LOFTON-TAYLOR,

Petitioner,

v.

VERIZON WIRELESS PERSONAL COMMUNICATIONS L.P.

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether the Eleventh Circuit erred in concluding that Petitioner's claims were preempted by the Fair Credit Reporting Act.

RULE 29.6 DISCLOSURE

Pursuant to Supreme Court Rule 29, the Respondent provides the following corporate disclosure:

1. Verizon Wireless Personal Communications L.P. ("Verizon Wireless") is a Delaware general partnership. Verizon Wireless has two partners, Verizon Wireless South Area LLC and Southern & Central Wireless, LLC. Both partners are limited liability companies wholly owned by Cellco Partnership.

2. Cellco Partnership has seven partners. Five of the partners, representing 55% of the interest in Cellco, are ultimately owned by Verizon Communications Inc. ("Verizon"). These partners are: Bell Atlantic Cellular Holdings, L.P.; NYNEX PCS Inc.; PCSCO Partnership; GTE Wireless Incorporated; and GTE Wireless of Ohio Incorporated (collectively, the "Verizon Partners"). None of the Verizon Partners is publicly held. Two of the partners, representing 45% of the interest in Cellco, are ultimately owned by Vodafone Group Plc ("Vodafone"). These partners are: PCS Nucleus, L.P. and JV PartnerCo, LLC (collectively, the "Vodafone Partners"). None of the Vodafone Partners is publicly held.

3. Verizon is a publicly held Delaware corporation. Vodafone is a publicly held British corporation. Neither Verizon nor Vodafone has a parent company, and no publicly held company has a 10% or greater ownership in either entity.

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STATUTORY PROVISIONS INVOLVED

The full texts of 15 U.S.C. §§ 1681h(e) and 1681t(b)(1)(F), which provide for preemption of certain state laws related to credit reporting, are attached hereto as Appendix A and B.

STATEMENT OF THE CASE

A. Relevant Facts

Distilled to the most essential, the operative facts in this case are straightforward. On September 19, 2003, Petitioner provided Verizon Wireless with a check in the amount of $165.00, and wrote a cell phone number on the check. Pet'r App. C 3.[1] Petitioner stated to the Verizon Wireless representative at the store that she wanted to pay this amount on her husband's cell phone account and that the number was on the check. *Id.* Verizon Wireless had an account associated with the number provided, in the name of another subscriber who was a friend of Petitioner's husband. *Id.* Later that day, Petitioner learned that her husband had opened his account with a different wireless carrier, and she placed a stop-payment order on the check she had provided to Verizon Wireless. *Id.* at 4.

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1. The Petition contains three unpaginated Appendices labeled A, B and C, which will be cited herein as Pet'r App. A, B or C. Respondent will try to cite to the pages of the Appendices as accurately as possible, rather than reproducing the materials herein.

The check subsequently was returned to Verizon Wireless, unpaid and marked by her bank "NSF/Non Redepositable." Pet'r App. B 3. Verizon Wireless transmitted the returned check to Certegy Check Services, Inc., which provided check authorization services to Verizon Wireless and was under contract to make a warranty payment to Verizon Wireless for any check that it approved but was later returned unpaid. *Id.* at 3-4.

B. Proceedings Below

On September 19, 2005, Petitioner brought Fair Credit Reporting Act ("FCRA") and state defamation and invasion of privacy claims, seeking $5,000,000 against Verizon Wireless and several other defendants who were voluntarily dismissed, for reporting allegedly inaccurate adverse information against Petitioner's credit by transmitting the unpaid check to Certegy.

The District Court concluded that Petitioner failed to state a claim under the FCRA and that her state law claims were preempted by Section 1681t(b)(1)(F) of the FCRA as a matter of law. Pet'r App. C 11-15. In doing so, the district court noted some divergence between district courts about the scope and proper interpretation of Section 1681t(b)(1)(F), and adopted the broader view of the section adopted by some district courts. *Id.* at 12-14.

On Petitioner's appeal of only the preemption decision, the Eleventh Circuit, in an unpublished opinion released on January 23, 2008, affirmed. Pet'r App. B. The Eleventh Circuit concluded that because Verizon

Wireless's provision of information (a cancelled check stamped "NSF/Non Redepositable") to Certegy was not false, and because there was no evidence that the provision was made maliciously with intent to injure, Section 1681h(e), FCRA's other preemption provision, which provides a qualified immunity to furnishers of information, precluded the state law claims. *Id.* at 6-8. The Eleventh Circuit stated that based on its application of Section 1681h(e), it "need not decide whether the preemption language in § 1681t(b)(1)(F) is broad enough to also preclude her claims." *Id.* at 8.

Petitioner on February 13, 2008 sought panel rehearing and rehearing en banc, which were denied on March 18, 2008. Pet'r App. A. Petitioner filed this Petition for a writ of certiorari on June 16, 2008.

In asking this Court to grant a writ of certiorari, Petitioner seeks relief from the Eleventh Circuit's application of Section 1681h(e) of the FCRA, which provides a qualified immunity to furnishers of credit information unless the information furnished is false and provided with malice or willful intent to injure. Though not identified as a "question presented" in the Petition, Petitioner also invites this Court to reach out and offer its views on the scope of Section 1681t(b)(1)(F)'s preemption, an issue not addressed by the Eleventh Circuit, or by any other Circuit to date, in order to provide guidance to federal district courts around the nation. *See* Pet. 15-18. For the reasons detailed below, this Petition should be denied.

INTRODUCTION AND SUMMARY OF REASONS TO DENY THE PETITION

Petitioner asks this Court to grant certiorari to review and reverse the Eleventh Circuit's factual findings and application of Section 1681h(e) to those facts, in order that this Court can then reach a second issue and provide "a definitive appellate ruling," Pet. 18, on the scope of Section 1681t(b)(1)(F) of the FCRA. The proper scope of that provision, however, is a question of law neither squarely presented in the decision below nor necessary to resolve the case at bar, and on which no Circuit Court has yet definitively ruled. This Court should decline each of Petitioner's invitations.

As to whether this Court need offer its guidance on the scope of Section 1681t(b)(1)(F), Petitioner's only asserted basis for review is an apparent interpretive disagreement between some district courts over the provision. But no conflict is alleged that would satisfy Supreme Court Rule 10. In fact, the Circuit Courts have yet to address the legal question raised, which is at this very moment wending its way through the federal system. What is more, even if review and clarification by this Court were appropriate, this case is a poor vehicle for addressing Section 1681t(b)(1)(F), because the decision below rested on an independent and adequate ground, namely FCRA's other preemption provision, Section 1681h(e).

As to whether the Eleventh Circuit erred in its application of Section 1681h(e) to the facts of this case, none of this Court's traditional criteria for certiorari are pled or satisfied. No conflict is alleged, and no credible case is made that the Eleventh Circuit's conclusion was in error. The Eleventh Circuit found that there was no genuine issue of material fact as to whether Verizon Wireless provided false information with malice or intent to injure. Not only is this sort of fact-weighing typically eschewed by this Court, the Eleventh Circuit's answer to that question, and the lower courts' preemption analyses, were correct.

Simply put, Petitioner provides no basis for this Court to review and reverse the Eleventh Circuit's straightforward application of Section 1681h(e) to the facts of this case. Nor does she offer any reason for the Court to reach out and decide questions of statutory interpretation that were unaddressed in the decision on review, are still percolating in the lower courts, and have yet to be addressed squarely by any Court of Appeals. This Petition is meritless, premature, and should be denied.

REASONS FOR DENYING THE PETITION

I. This Case Is a Poor Vehicle for Addressing the Legal Issues on Which Petitioner Seeks Guidance.

A. The Eleventh Circuit Properly Resolved the Case on Alternate, Narrower Grounds.

The ultimate legal issue on which Petitioner seeks this Court's guidance – the scope and meaning of Section 1681t(b)(1)(F), including its relationship to Section 1681h(e) – is not squarely presented or even at issue in this case. This case was properly disposed of by the Eleventh Circuit on narrower and simpler grounds. Specifically, the Eleventh Circuit applied the preemption provision in Section 1681h(e), rendering any analysis under Section 1681t(b)(1)(F) unnecessary and purely advisory. *See* Pet'r App. B 8.

The disposition of this case under Section 1681h(e) was manifestly appropriate. Indeed, Petitioner's own "question presented" focuses this Court's attention exclusively on "[w]hether there are substantial facts to support a finding by a jury that the action of Verizon Wireless . . . placed Petitioner in a false light, and manifested a malicious or willful intent to injure her . . . under Section 1681h(e)." Pet. i. Petitioner concedes that Section 1681h(e) "is available at all times," and "preempts State Law claims in the nature of defamation, invasion of privacy, or negligence to the extent that such claims do not result from willful or malicious conduct." Pet. 16-17. Thus, unless she can convince this Court that the Eleventh Circuit made erroneous factual findings or misapplied what was a properly stated rule of law, the decision below must stand.

What is more, even if Petitioner could show that the Eleventh Circuit improperly applied Section 1681h(e), she would still not likely secure the broad legal guidance sought, as this Court would likely remand to the Eleventh Circuit for consideration in the first instance of the scope of Section 1681t(b)(1)(F) and its application to the facts of this case.

For the foregoing reasons, this Petition presents a poor vehicle for resolution of the legal and factual issues raised by Petitioner.

B. This Case Satisfies None of the Traditional Criteria for Review by this Court.

The Petition meets none of the criteria of Supreme Court Rule 10, and should be denied on that ground alone. Though Petitioner states there is "confusion in the Circuits," Pet. 15, about the scope of the FCRA's preemptive force, what she really alludes to is a divergence in interpretation between some federal district courts on a legal question that is, as noted above, irrelevant to the disposition of this case. No Court of Appeals has yet weighed in on the statutory question Petitioner urges this Court to take up, and as such, the Petition presents not even a hint of the sort of intolerable conflict that warrants this Court's attention. *See, e.g.*, *Layne & Bowler Corp. v. Western Well Works*, 261 U.S. 387, 393 (1923) (dismissing writ of certiorari as improvidently granted because case involved no "real and embarrassing conflict of opinion and authority between the circuit courts of appeal.")

Petitioner cites no Court of Appeals or Supreme Court case that is in conflict with the decision under review, or with any other Court of Appeals, for that

matter. Petitioner cannot cite any relevant conflict because no Circuit Court yet has addressed the question of the relationship between Sections 1681t(b)(1)(F) and 1681h(e), or the question of Section 1681t(b)(1)(F)'s meaning more generally.[2] Like the Eleventh Circuit in the case at bar, the only other Court of Appeals facing the issue found alternative, narrower avenues to resolve the case before it. *See Beyer v. Firstar Bank, N.A.*, 447 F.3d 1106, 1108 (8th Cir. 2006) (concluding that with respect to "the scope and interplay of the FCRA's preemption provisions . . . [w]e find it unnecessary to address the preemption issue because we can decide the case on a much simpler basis," namely the lack of "evidence from which a reasonable jury could have determined that the report was false"); *see also* Pet'r App. B 8 ("As a result [of the court's conclusion under Section 1681h(e)] we need not decide whether the preemption language in § 1681t(b)(1)(F) is broad enough to also preclude her claims.").

Any "confusion" that exists is really nothing more than divergence between district courts as to the appropriate interpretive methodology for evaluating

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2. Indeed, though the Petitioner desires an opinion explaining the preemptive force of the FCRA Section *not* addressed by the Eleventh Circuit, she does not and cannot even allege a conflict with respect to the preemption provision that the lower court *did* address. The Eleventh Circuit's conclusions with respect to Section 1681h(e) are perfectly consistent with other Circuits' applications of that section, *see, e.g., Young v. Equifax Credit Information Services, Inc.*, 294 F.3d 631, 638 (5th Cir. 2002) ("The FCRA preempts state law defamation or negligent reporting claims unless the plaintiff consumer proves 'malice or willful intent to injure' him." (citations omitted)), and Petitioner does not allege otherwise.

Sections 1681h(e) and 1681t(b)(1)(F). *See, e.g., Beyer*, 447 F.3d at 1108 ("District courts have come to different conclusions about the scope and interplay of the FCRA's preemption provisions, 15 U.S.C. § 1681h(e) and § 1681t(b)(1)(F)."). These trial court disagreements are not ripe for resolution by this Court and do not constitute the type of conflict that justifies this Court's grant of certiorari.

Indeed, the preemptive scope of the FCRA, including any disagreement about the interplay between Sections 1681h(e) and 1681t(b)(1)(F), is being considered in pending litigation and may soon reach a Court of Appeals for resolution. For example, in *Ross v. Washington Mutual Bank*, No. 5:06-CV-468-D, 2008 WL 2620174 (E.D.N.C. July 2, 2008) (finding no conflict between Section 1681h(e) and Section 1681t(b)(1)(F), and concluding that summary judgment to bank under Section 1681t(b)(1)(F) was appropriate), the plaintiff on July 31, 2008 filed a notice of appeal to the Fourth Circuit (No. 08-1851). In a more recent decision from the District of Maine, *Donovan v. Bank of America*, No. 07-168-P-H, 2008 WL 4061073, at *7 n. 74 (D. Me. Aug. 29, 2008) (granting summary judgment to bank under Section 1681h(e), and noting but not addressing "an argument for complete preemption under 15 U.S.C. § 1681t(b)(1)(F)"), a notice of appeal may be filed as well. Because the Courts of Appeals are likely to have occasion to address the very issues on which Petitioner seeks this Court's opinion, certiorari is even less appropriate at this time.

The closest Petitioner comes to identifying any of the traditional criteria for certiorari is where she states that due to the lack of appellate guidance, litigants are forced to conduct time consuming and expensive litigation without a "reasonable degree of certainty as to how a particular judge will rule . . . [and] how the appellate court will rule." Pet. 15. However, in the absence of any conflict over relevant legal authority, the possibility that future plaintiffs may litigate without precise certainty as to which preemption theory a court may apply to unknown cases is not an issue of national importance that would justify this Court's attention at this time.

IV. The Courts Below Correctly Applied the FCRA to Conclude that Petitioner's Claims are Preempted.

A. The Court of Appeals Correctly Concluded that Section 1681h(e) Preempts Petitioner's State Law Defamation and Invasion of Privacy Claims.

In order to obtain the relief she seeks, Petitioner must convince this Court that the Eleventh Circuit erred in finding that there were no genuine issues of material fact as to whether the information furnished by Verizon Wireless to Certegy was false and provided with malice or willful intent to injure. Indeed, she asks this court to review the facts evaluated by the lower court and "set aside" the findings below. Pet. 15.

This Court does not sit to review mere error below. Sup. Ct. R. 10. Indeed, the proper application of Section 1681h(e) to the particular claims at issue, or the factual

details underlying the preempted claims, are not the types of questions that typically concern this Court. But even if it were to sit in such review here, the Eleventh Circuit's application of Section 1681h(e) was correct and should be affirmed.

Section 1681h(e) provides in relevant part:

> [N]o consumer may bring any action or proceeding in the nature of defamation, invasion of privacy, or negligence with respect to the reporting of information against any consumer reporting agency, any user of information, or any person who furnishes information to a consumer reporting agency . . . *except as to false information furnished with malice or willful intent to injure such consumer.*

15 U.S.C. § 1681h(e) (emphasis added). The parties and the Eleventh Circuit below agree that the relevant part of this section is the last part,[3] carving out an exception to the general immunity from suit, for false information produced maliciously.

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3. Petitioner focuses on this language and the Eleventh Circuit's conclusion that there was no genuine issue of material fact on the question of falsity or malice. *See* Pet. 11-15. What is more, she states that Section 1681h(e) "preempts State Law claims in the nature of defamation, invasion of privacy, or negligence to the extent that such claims do not result from willful or malicious conduct," Pet. 16-17, and notes that "Section 1681h(e) is available at all times," Pet. 17.

Because Petitioner has not shown that Verizon Wireless provided false information or did so with any malice, Section 1681h(e) bars her state law claims as a matter of law. As the Eleventh Circuit explained, Petitioner's state law claims are based solely on the information Verizon Wireless communicated to Certegy, specifically, the transmittal of the returned check, stamped "NSF/Non Redepositable," that Petitioner had provided to it. There is no evidence that any part of the communication, including the stamp, was false. In fact, it is objectively true: Verizon Wireless reported to Certegy that a check submitted to Verizon Wireless had been returned unpaid. This obligated Certegy to pay Verizon Wireless for the amount of the check, which it previously had approved. The Petition alleges that Verizon Wireless failed to apprise Certegy of additional, allegedly relevant facts concerning its relationship to Petitioner, which "placed Petitioner in a false light by inferring to Certegy that she failed to honor a check owed to Verizon." Pet. 13. Petitioner's statement that she had no account with Verizon Wireless, and thus did not owe Verizon Wireless any money, is of no moment in evaluating the falsity of the transmitted check. That check accurately conveyed correct information, namely that the check had been returned to Verizon Wireless as unpaid. Thus, the lower court was correct in concluding that there is no genuine issue of material fact on the falsity prong of Section 1681h(e)'s exception.

Nor is there any evidence – and certainly no genuine issue of material fact – that Verizon Wireless transmitted the returned check with any malice or intent to injure. Verizon Wireless simply sought to collect the amount of the returned check from Certegy pursuant to their

contract. The Petition offers the Court no evidence to contradict the lower court's conclusion and simply repeats Petitioner's conclusory assertion that there is a genuine issue of material fact on this point. Pet. 14-15. But much more is needed to show malice. *See, e.g.*, *Morris v. Equifax Info. Serv., Inc.*, 457 F.3d 460, 471 (5th Cir. 2006) (concluding plaintiff failed to present evidence "that Equifax published false statements about Morris knowing the statements were false or with a reckless disregard of whether they were false" where there was no showing that "the defendant in fact entertained serious doubts as to the truth of his publication." (citation omitted). Because Petitioner utterly fails on this score, she cannot establish malice or willful intent to injure her and thus cannot bring her state law claims within the exception to Section 1681h(e)'s immunity. The Eleventh Circuit correctly concluded that Section 1681h(e) precluded Petitioner's state law claims as a matter of law.

B. The District Court Correctly Held that Petitioner's Claims for Defamation and Invasion of Privacy are Preempted by Section 1681t(b)(1)(F).

Finally, in the unlikely event that this Court (1) deems this case worthy of certiorari, (2) concludes that the Eleventh Circuit erred in finding no genuine issue of material fact as to the applicability of Section 1681h(e), (3) decides not to remand to the Eleventh Circuit for consideration of FCRA's other preemption provision, and (4) itself addresses the scope of Section 1681t(b)(1)(F), it should affirm the district court.

The plain language of the FCRA preempts Petitioner's state law claims. Section 1681t(b)(1)(F) provides that:

> No requirement or prohibition may be imposed under the laws of any State . . . with respect to any subject matter regulated under . . . section 1681s-2 of this title, relating to the responsibilities of persons who furnish information to consumer reporting agencies . . . .

15 U.S.C. § 1681t(b)(1)(F).[4] This is consistent with the statement in Section 1681t(a), which provides for preemption of "the laws of any State with respect to the collection, distribution, or use of any information on consumers . . . to the extent that those laws are inconsistent with any provision of this subchapter . . . ." 15 U.S.C. § 1681t(a).

Plaintiff's state law claims clearly relate to allegations about Verizon Wireless's "furnish[ing] [of]

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4. Section 1681s-2 lays out two standards governing conduct, only one of which is enforceable through a private right of action. Section 1681s-2(a) establishes duties applicable to furnishers of information generally, without regard to whether the furnisher was on notice of a dispute by a consumer about the accuracy of the information. Section 1681s-2(b) imposes duties on furnishers once they are on notice of a factual dispute about information they have provided. Only Section 1681s-2(b) is privately enforceable. *See* 15 U.S.C. §§ 1681s-2(c), (d); *see, e.g., Saunders v. Branch Banking & Trust Co.*, 526 F.3d 142, 149 (4th Cir. 2008) ("FCRA explicitly bars private suits for violations of § 1681s-2(a), but consumers can still bring private suits for violations of § 1681s-2(b).").

information to consumer reporting agencies," *id.* § 1681t(b)(1)(F), were predicated on duties established by Section 1681s-2, and thus were properly held preempted by the district court.

In so concluding, the district court noted a divergence of authority between the Northern and Middle Districts of Alabama as to the scope of Section 1681t(b)(1)(F). *See* Pet. App. C 6-7. Essentially, the Northern District has taken the view that Section 1681t(b)(1)(F) preempts only those state tort claims that involve conduct regulated by Section 1681s-2(b), namely conduct occurring *after* a furnisher is made aware of a consumer dispute. The Middle District has taken the view that Section 1681t(b)(1)(F) preempts *all* state tort claims relating to the furnishing of information, *regardless* whether the claims involve conduct before or after the furnisher is made aware of a dispute, namely conduct regulated by Section 1681s-2(a) and (b). After laying out the disagreement, the district court, persuaded by the reasoning of the Middle District and following an earlier decision from its own court, concluded that allowing Petitioner's state law claims – which were based on duties established by Section 1681s-2(a) – to proceed would contravene the FCRA. The district court's reasoning was simple and correct: because Petitioner's state law claims are predicated on the duties established by Section 1681s-2(a), they are preempted.

This reading of the statute is compelled by the plain text of Section 1681t(b)(1)(F), which provides, "[n]o requirement or prohibition may be imposed under the laws of any State . . . with respect to any subject matter regulated under . . . section 1681s-2 . . . ."

Section 1681t(b)(1)(F) makes no distinction between the two subsections of Section 1681s-2, instead broadly preempting state law claims that relate to or are based on the duties established by either subsection. Interpreting Section 1681t(b)(1)(F) as Petitioner urges, to preempt only those claims that are based on Section 1681s-2(b) where Section 1681t(b)(1)(F)'s preemption provision by its plain terms includes claims based on Section 1681s-2(a), would artificially limit the express preemption provided by Congress.[5] If Congress had intended that Section 1681t(b)(1)(F)'s preemption be so limited in scope, it could have written Section 1681t(b)(1)(F) to read: "[n]o requirement or prohibition may be imposed under the laws of any State . . . with respect to any subject matter regulated under . . . section 1681s-2*(b)* of this title." Congress did not. Petitioner's state law claims are covered by the plain terms of Section 1681t(b)(1)(F) and were properly found to be preempted.

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5. Limiting Section 1681t(b)(1)(F)'s preemption to suits based on duties established by Section 1681s-2(b) also would create the anomalous situation in which state law claims based on duties privately unenforceable under federal law would survive preemption, but those based on duties enforceable by private federal rights of action would be preempted. The district court rejected such an anomalous reading and followed the broader and textually faithful understanding of Section 1681t(b)(1)(F).

CONCLUSION

In the absence of any of the traditional criteria for certiorari, Petitioner asks this Court to review and reject the Eleventh Circuit's factual findings and its application of Section 1681h(e), in order that this Court can proceed to reach a separate legal question, the scope of Section 1681t(b)(1)(F), not addressed by the Circuit Court and not necessary to dispose of this case. For the reasons laid out above, this petition utterly fails to satisfy this Court's standards for review and should be denied.

Respectfully submitted,

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September 29, 2008

APPENDIX

APPENDIX A

15 U.S.C. § 1681h

(e) Limitation of liability

Except as provided in sections 1681n and 1681o of this title, no consumer may bring any action or proceeding in the nature of defamation, invasion of privacy, or negligence with respect to the reporting of information against any consumer reporting agency, any user of information, or any person who furnishes information to a consumer reporting agency, based on information disclosed pursuant to section 1681g, 1681h, or 1681m of this title, or based on information disclosed by a user of a consumer report to or for a consumer against whom the user has taken adverse action, based in whole or in part on the report except as to false information furnished with malice or willful intent to injure such consumer.

APPENDIX B

15 U.S.C. § 1681t

(a) In general

Except as provided in subsections (b) and (c) of this section, this subchapter does not annul, alter, affect, or exempt any person subject to the provisions of this subchapter from complying with the laws of any State with respect to the collection, distribution, or use of any information on consumers, or for the prevention or mitigation of identity theft, except to the extent that those laws are inconsistent with any provision of this subchapter, and then only to the extent of the inconsistency.

(b) General exceptions

No requirement or prohibition may be imposed under the laws of any State—

(1) with respect to any subject matter regulated under—

* * *

(F) section 1681s-2 of this title, relating to the responsibilities of persons who furnish information to consumer reporting agencies, except that this paragraph shall not apply—

Appendix B

(i) with respect to section 54A(a) of chapter 93 of the Massachusetts Annotated Laws (as in effect on September 30, 1996); or

(ii) with respect to section 1785.25(a) of the California Civil Code (as in effect on September 30, 1996);

* * * *